

REMARKS

Claims 1-16 and 55-57 are pending. Claims 17-54 and 58-63 have been withdrawn. Claim 1 is amended. Claim 13 is canceled. Claims 35 – 43, and 58 though withdrawn, are also amended.

Claims 1, 2 and 7-13 are rejected under 35 U.S.C. § 102(e) as being unpatentable over US Patent No. 6,456,981 to Dejaeger. Claims 3-6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dejaeger in view of the Examiner's Official Notice. Claims 14-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Dejaeger in view of U.S. Patent No. 7,330,828 to Schoder. Claims 55-57 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dejaeger in view of U.S. Patent Application Publication No. 2002/0082925 to Herwig.

Applicant appreciates the courtesies extended to Applicant's counsel during a telephone interview on April 23, 2010. The substance of that interview is as follows:

1. The interview did not include any exhibits or demonstrations.
2. Claim 1 was discussed in particular.
3. The prior art that was referred to included U.S. Patent No. 6,456,981 to Dejaeger et al.
4. Applicant's counsel and the Examiner discussed how the claimed method includes generating an item of current information the content of which is determined by the time of the sales transaction for the good/service and the type of information pre-selected by the customer prior to the time of sales transaction.

5. Dejaeger et al., nor the other references cited, disclose or suggest storing media profiles with pre-selected information or generating current time-sensitive information based on pre-selected information, as will be discussed further below.
6. Applicant's counsel and the Examiner also discussed the status of the Office Action mailed November 24, 2009. As discussed with the Examiner, the Office Action mailed November 24, 2009 on the "Office Action Summary Sheet" indicates the Office Action is non-final rejection. At page 1 that same Office Action states "This Action is Made Final." The Examiner clarified that the instant Office Action is non-final rejection. Applicant's counsel and Examiner also discussed the reinstatement and allowance of withdrawn claims 17-54 and claims 58-63.
7. Applicants would file a Reply and Amendment commensurate with the interview.

The Examiner's Rejection Under 35 U.S.C. 102(b) Must Be Withdrawn Since Dejaeger Fails to Disclose All Claim Limitations

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913 (Fed. Cir. 1989). Furthermore, the elements must be arranged as required by the claim.

Claim 1 now requires, with emphasis added:

A computer implemented method of providing to a customer customized media at a physical point of sale (PPOS) at a time of a sales transaction for a good/service, comprising the steps of:

storing a plurality of customer media profiles in a computer memory, each of the customer media profiles comprising a customer identifier and a media content type identifier associated with the customer identifier, the media content type identifier identifying a type of information, the type of information comprising information that is pre-selected by the customer prior to the time of the sales transaction for a good/service;

receiving a customer identifier from a customer at a point of sale computer located proximate to the PPOS, the point-of-sale computer being in electronic communication with the database;

retrieving from the computer memory a media profile that is associated with the customer identifier received from the customer, by the point-of-sale computer;

generating via a computer processor an item of current time-sensitive information the content of the generated item of current time-sensitive information being determined by the time of the sales transaction for the good/service and the type of information pre-selected by the customer identified in the retrieved media profile; and

communicating the generated item of current time-sensitive information, to the customer at the PPOS proximate to the time of the sales transaction.

Dejaeger does not teach, nor could it suggest, the computer implemented method of claim 1 that includes storing in a computer memory “the type of information comprising information that is pre-selected by the customer prior to the time of the sales transaction for a good/service.” Further, Dejaeger could not teach or suggest “generating an item of current time-sensitive information” the content of which is “determined by the time of the sales transaction for the good/service and the type of information pre-selected by the customer.” Rather, Dejaeger presents an “advertising message” to the customer at a physical point of sale at the time of a sales transaction. The “advertising message” is generated as a result of purchasing a particular item and is not dependent on customer preferences for certain types of media content. Thus, the “advertising message” is not “an item of current time-sensitive information” based on the “information pre-selected by the customer prior to time of sale transaction at the physical point

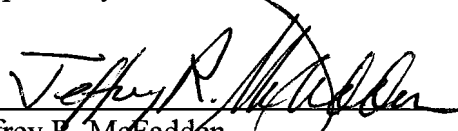
of sale.” Accordingly, because Dejaeger does not teach the limitations of claim 1, the rejection of this claim under 35 U.S.C. 102(b) should be withdrawn.

In view of the foregoing, it is respectfully submitted that independent claim 1 of the present application is allowable, even though the foregoing may not present all of the reasons for allowability. The claims dependent on claim 1, including previously withdrawn claims, are also allowable because of their respective dependence from an allowable independent claim.

It is respectfully submitted that the present application is in condition for immediate allowance, and such action is solicited. If for some reason the Examiner deems that the present application is not in condition for immediate allowance, it is respectfully requested that the Examiner telephone the undersigned at 336-721-3730, in an effort to expedite prosecution.

Respectfully submitted

4.26.10
Date


Jeffrey R. McFadden
Registration No. 46,916
Gregory A. Grissett
Registration No. 59,910
CUSTOMER NUMBER 26158
WOMBLE CARLYLE SANDRIDGE & RICE
P. O. Box 7037
Atlanta, Georgia 30357-0037
336-721-3730 (Telephone)
336-726-8061 (Facsimile)